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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,693	12/06/2000	Shantha C. Nalur	8265-366	8558

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PATENT DEPARTMENT
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EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

9

DATE MAILED: 07/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/729,693

Applicant(s)

NALUR ET AL.

Examiner

Carolyn A Paden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9, 11-14, 19, 20, 22, 23 is/are rejected.
- 7) ☒ Claim(s) 3-8, 10, 15-17, 21 and 24-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 9, 11-14 and 20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Krawczyk (5,505,982) for reasons of record used in rejecting claims 1 and 3.

Krawczyk discloses co-processed cellulose surfactant made from Avicel microcrystalline cellulose and sorbitan mono-stearate. The sorbitan monostearate is stated to have an HLB of 4.7. The mixture is heated to 71.1 C to keep the combination melted (see example 1). In example 6 the co-processed composition is used for making chocolate.

With regard to claim 9, the process shown at example 6 provides for combining chocolate making ingredients, also adding in an emulsifier. Then the ingredients are refined and conched at a temperature of 87.8C for dark chocolate and 65.6C for milk chocolate. Finally the chocolate is cooled. The process of Krawczyk appears to follow along with the same process steps shown in claim 9.

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With regard to claim 20, 10% of the surfactant cellulose composition is added to the chocolate mixture. The surfactant cellulose composition appears to contain about 10% surfactant as evidenced by the ratio of components of example 1.

With regard to claim 1, applicant urges that the references do not state that the melting point of the emulsifier component is within the claimed ranges. This is disagreed with because at column 10, lines 36-38 the reference clearly states that the composition is maintained at 71.1C "to keep the emulsifier above its melting point."

Thus one of ordinary skill in the art would anticipate that the melting point of the emulsifier would be slightly less than 70C. Applicant urges that his product is a chocolate composition that does not contain a cellulose composite. This has been considered but is not persuasive because claim 1 is not so limited.

Claims 22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The range of emulsifier set forth in claim 22 falls outside of the range set forth in claim 2.

Claims 13, 14 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Varvil as further evidenced by Gunstone for reasons of record.

Varvil discloses fluid shortening that contains sodium stearyl-2-lactylate and liquid soybean oil along with other ingredients (see example 1). At column 6, lines 45--46 the melting point of the sodium stearyl-2-lactylate is disclosed to be at about 135-

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145 F. Gunstone is cited for evidence of the HLB value of sodium stearyl-2-lactylate. The product is used in baking operations and in dough conditioners. Applicant argues that the amount of liquid oil in the product is different from that of the reference. This is disagreed with as clearly shown at column 2, line 52, wherein it states that the liquid vegetable oil is present at an amount of at least 40%.

Claims 2 and 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Herzing (4,464,411) for reasons of record used in rejecting claims 1-4 and 7.

Herzing discloses a confectionary coating containing polyglycerol ester emulsifiers. At column 6, lines 26-38, milk chocolate is disclosed to be a coating composition. At Table 2, column 5, lines 50-64, the emulsifiers are disclosed to have the HLB values and melting points of the claims. The amount of the polyglycerol emulsifier in the product is shown at Table 3. The amount of polyglycerol ester blend used in the product is stated to range from 1-7% (see column 6, lines 54-62). Applicant argues the difference in melting point, the HLB value and the amount of the emulsifier in the product, which is clearly shown in Herzing for the specifically rejected claims.

Claims 3-8, 10, 15-17, 21 and 24-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The rejection of the claims over Player has been dropped

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-

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3294. The examiner can normally be reached on Monday to Friday from 7am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Carolyn Paden
CAROLYN PADEN 7-24-02
PRIMARY EXAMINER
GROUP 1300-1761